

CONSOLE | HOLLAWELL

PERSONAL INJURY TRIAL ATTORNEYS

January 25, 2018

VIA ELECTRONIC FILING

Honorable Steven C. Mannion, Magistrate Judge
 United States District Court
 District of New Jersey
 50 Walnut Street
 Newark, NJ 07101

**RE: Deborah Fuller and David Fuller, As Administrators Ad Prosequendum of the
 Estate of Sarah A. Fuller, Deceased and Deborah Fuller and David Fuller,
 Individually v. Insys Therapeutics, Inc., et al
 Case No. 2:17-cv-07877-ES-SCM**

Dear Judge Mannion:

I am writing this joint submission to the Court regarding Defendant, Insys' Disclosures that have been deficient since submission on December 28, 2017. Insys has failed to fully disclose insurance information and provide all reservation of rights or any coverage impact letters. It is Plaintiffs position that Rule 26 insurance disclosure requirements cover all documents relating to insurance coverage, including coverage position letters. Indeed, information regarding denial of coverage is crucial at this time as it will dictate the need to join individual officers and managers of Insys.

During the Rule 16 Conference on January 5, 2018, this was discussed and Your Honor Ordered that Insys provide all insurance related documents by January 19, 2018. Insys has refused to do so despite Your Honor's Order and despite at least four (4) good faith efforts and reminders from the undersigned since our Conference on January 5, 2018.

I have personally conferred with Mr. Crawford in good faith in an effort to resolve this dispute. Insys' initial response to **Fed. R. Civ. P. 26(a)(1)(A)(iv)** was "Insys has sufficient insurance coverage limits to cover a judgment that may arise from this proceeding." However, after reviewing the policy that was eventually provided, it appears as though Insys may have no coverage whatsoever for this cause of action. My office has made exhaustive attempts to clarify the situation by obtaining whatever reservation of rights or denial letters Insys may have in regard to this matter. We have explained to counsel that the information regarding reservation of rights or denial of insurance coverage is paramount at this point as it will dictate the need to join individual officers and managers of Insys.

Please send all correspondence to Marlton, NJ Office

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Attached hereto is the email response from Mr. Crawford setting forth Insys' position in regard to their obligation to produce any reservation of rights letters or denial of coverage documentation in regard to this matter.

We await your instruction on how to proceed in regard to Insys' obligation to produce the aforementioned insurance coverage information.

Respectfully submitted,

/s/ Mark Dewland

MARK C. DEWLAND
RICHARD J. HOLLAWELL
Attorneys for Plaintiff

RJH/kp
Encs.

cc: Philip Crawford, Esquire (via eFiling)

Mark Dewland

From: Mark Dewland
Sent: Friday, January 26, 2018 1:30 PM
To: 'Crawford, Philip W.'
Cc: Richard Hollawell; Katherine Prettyman
Subject: RE: Estate of Fuller v Insys Therapeutics et al Civ Action No 17-07877 ES-SCM
Attachments: image001.jpg

Phil...please stop playing games....you have my letter to the Judge in Word format. Please put your position in the letter and send to me so I can submit it to the Judge this afternoon as a joint submission...I'm not your secretary and I'm not typing out your argument and sending it to you for your review.

From: Crawford, Philip W. [mailto:PCrawford@gibbonslaw.com]
Sent: Friday, January 26, 2018 12:17 PM
To: Mark Dewland
Cc: Schwartz, Adam (aschwartz@carltonfields.com); Walz, David J. (dwalz@carltonfields.com); Munsie, Amanda M.
Subject: Estate of Fuller v Insys Therapeutics et al Civ Action No 17-07877 ES-SCM

Mark: I write in regard to the issue of alleged non compliance by Insys Therapeutics, Inc. with its obligations pursuant to Fed R. Civ. P. 26 (a) (1)(A) (iv). Despite the incorrect statements set forth in the letter of Mr. Hollawell to the Court regarding this issue (dated January 19, 2018), Insys Therapeutics timely tendered as of that date both declaration sheets and insurance policies extant between it and the stated insurance carriers for the time period relevant to this case. Indeed at the time of Mr. Hollawell's letter to the Court, he had already acknowledged receipt of these very documents.

It is the position of Insys Therapeutics that its tender of declaration sheets and insurance policies for both primary and excess coverages satisfies the requirements of Rule 26 (a) (1) (A) (iv) which requires production of "any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action..." The materials tendered do disclose that potential obligation of the insuring companies listed on the documents.

Your demand for additional documentation or correspondence between Insys and its carriers does not appear within the scope of the rule. If you have case law or other relevant authority that supports this expanded disclosure obligation, please send same to me for review and reconsideration of Insys' position on this matter.

If you have no relevant case law for presentation and you continue to disagree with the position of Insys on this matter, for the purpose of the joint submittal to the Court as required by Magistrate Mannion's procedural rules, please quote my statements above and send me your draft submittal letter for review prior to filing.

Thank you.

Philip W. Crawford
Director
Gibbons P.C.

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